

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

20-MJ-1187-JJM

DYLLAN BARBER,

Defendant.

**NOTICE OF MOTION AND UNOPPOSED MOTION FOR ADJOURNMENT
OF RULE 48(b) DATE AND EXCLUSION OF SPEEDY TRIAL ACT TIME**

THE UNITED STATES OF AMERICA, by and through its attorney, James P. Kennedy, Jr., United States Attorney for the Western District of New York, Jeffrey T. Fiut, Special Assistant United States Attorney, hereby moves the Court for a sixty-day adjournment of the Rule 48(b) date in this case from September 22, 2021 through and including November 22, 2021. The government also moves for an exclusion of Speedy Trial Act time through that date. The motion is based upon the accompanying declaration of Special Assistant United States Attorney Jeffrey T. Fiut. Counsel for the defendant, AFD Brian P. Comerford, Esq., consents to the relief sought herein.

DATED: Buffalo, New York, September 8, 2021.

JAMES P. KENNEDY, JR.
United States Attorney

BY: *s/JEFFREY T. FIUT*
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v.

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DYLLAN BARBER,

Defendant.

DECLARATION

I, JEFFREY T. FIUT, declare the following under 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I am a Special Assistant United States Attorney for the Western District of New York and am assigned to my office's file concerning the above-captioned matter.

2. This declaration is submitted in support of the government's motion for a sixty-day extension of the September 22, 2021 Rule 48(b) date for dismissal of the complaint until November 22, 2021, with an accompanying exclusion of Speedy Trial Act time through that date.

3. On November 17, 2020, the Court signed a criminal complaint charging the defendant with production and attempted production of child pornography, in violation of 18

U.S.C. § 2251(a) and (e), and cyberstalking, in violation of 18 U.S.C. § 2261A(2)(B). The Court held an initial appearance on the criminal complaint on November 23, 2020 and released the defendant on conditions. The Court set a Rule 48(b) date of February 23, 2021 and excluded Speedy Trial Act time through that date pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (h)(7)(B)(iv). The Court thereafter granted multiple extension of the Rule 48(b) date with corresponding exclusions of Speedy Trial Act time. The current Rule 48(b) date is September 22, 2021.

4. After the defendant made his initial appearance on the criminal complaint, the parties began discussing a potential pretrial resolution of this case. The parties recently agreed on the terms of a plea agreement. A district judge has been assigned for purposes of a plea, and the parties are in the process of scheduling a plea hearing.

5. Consequently, the government respectfully requests that the Court adjourn the Rule 48(b) date from September 22, 2021 through and including November 22, 2021. The government is requesting a sixty-day adjournment because defense counsel AFDPD Brian Comerford started a criminal trial on September 8, 2021 that is expected to last three to four weeks. As a result, the parties do not expect to be able to schedule a plea hearing before the district judge until October 2021, at the earliest.

6. Since the parties have agreed to the terms of a pre-indictment resolution of this matter and expect to have the matter scheduled for a plea in the near future, speedy trial time in this matter should be excluded to afford the parties a reasonable opportunity to schedule

this matter for a plea before the district judge. The public's interest in conserving resources by avoiding the unnecessary use of the grand jury, the time and expense of both a trial and a likely appeal, combined with the certainty of conviction that will be obtained through a plea of guilty by the defendant, outweigh the public's interests in a speedy trial. Furthermore, the defendant's interest in obtaining the benefit of a lesser sentence which will likely accompany the pretrial disposition of this matter outweigh the interests of the defendant in a speedy trial. Based on the foregoing representations, the exclusion of time in this matter is in the interest of justice and not contrary to the interests of the public and the defendant in a speedy trial pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (h)(7)(B)(iv).

7. Before filing this motion, I conferred with defense counsel, AFPD Brian Comerford. Mr. Comerford does not oppose the relief requested in this motion.

WHEREFORE, the government respectfully requests that the Court grant the government's motion, adjourn the Rule 48(b) date in this case from September 22, 2021 through and including November 22, 2021, and exclude Speedy Trial Act time through and including November 22, 2021.

DATED: Buffalo, New York, September 8, 2021

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